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ADDITIONAL

Brief and Argument of Appellant

BY CHAS. A. CLARK.

Supreme Court of the United States

OCTOBER TERM, 1905.

No. 50.

BERYL F. CARROLL, AUDITOR OF STATE OF THE STATE OF IOWA, APPELLANT,

vs.

THE GREENWICH INSURANCE COMPANY OF NEW YORK, ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF IOWA.

(19,399)

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vs.

THE GREENWICH INSURANCE COMPANY OF NEW YORK, *et al.*, APPELLEES.

Appeal from the Circuit Court of the United States for the Southern District of Iowa.

On behalf of appellant further authorities are submitted upon the following points:

I.

THE STATUTE ASSAILED IS UNIFORM IN ITS OPERATION.

So far as the Constitution of Iowa is concerned, it may be assumed that this Court will follow the construction placed upon it by the Supreme Court of that State by a long line of decisions. Under the "Uniformity Clauses" of that Constitution it has been held—

That a statute prescribing regulations for actions on insurance policies different from those on other contracts is valid.

Christie *v.* Life, &c., Co., 82 Iowa, 360.

That a method assessing railway companies different from the method of assessing other tax payers is valid.

Central Iowa R. R. Co. *v.* Board, 67 Iowa, 199.

Same as to express and telegraph companies.

U. S. Ex. Co. *v.* Ellison, 28 Iowa, 370.

The statute establishing the liability of railroad companies to employees for negligence of co-employees is valid.

McAunich *v.* M. & M. Ry. Co., 20 Iowa, 338;
Deppe *v.* Ry. Co., 36 Iowa, 52.

Assessing State banks for taxation differently from National banks.

Primghar State Bank *v.* Rerick, 64 N. W. Rep., 801.

This Court has followed the Supreme Court of Iowa in its construction of these "uniform law" clauses of the Constitution of Iowa.

The legislature of Iowa fixed maximum rates for railroads, dividing them into three classes, with separate rates for each class. This Court sustained the statute, and said, Waite, *C. J.*:

"The statute divides the railroads of the State into classes, according to business, and establishes maxi-

mum rates for each class. It operates uniformly on each class, and this is all the Constitution requires. The Supreme Court of the State, in the case of *McAunich* v. *M. & M. Railroad Co.*, 20 Iowa, 343, in speaking of legislation as to classes, said: 'These laws are general and uniform, not because they operate upon every person in the State—for they do not—but because every person who is brought within the relation and circumstances provided for is affected by the law. They are general and uniform in their operation upon all persons in the like situation, and the fact of their being general and uniform is not affected by the number of persons within the scope of their operation.' This act does not grant to any railroad company privileges or immunities which, upon the same terms, do not equally belong to every other railroad company. Whenever a company comes into any class, it has all the 'privileges and immunities' that have been granted by the statute to any other company of that class. * * *

"Whether this is the best that could have been done is not for us to decide. Our province is only to determine whether it could have been done at all and under what circumstances. If it could, the legislature must decide for itself, subject to no control from us, whether the common good requires that it should be done."

Chicago, &c. R. R. Co. *v.* Iowa, 94 U. S., 163–4.

II.

Uniformity Under Fourteenth Amendment.

Here the test of uniformity is practically the same

The reasoning of this Court in the case last cited, and the rule there laid down under the "uniformity" clauses of the Constitution of Iowa, is not different from its reasoning, and the rule laid down by it as to the requisite uniformity under this amendment.

Thus, in a recent and very persuasive case, it was said—opinion by Mr. Justice Day:

> "It is not the purpose of the Fourteenth Amendment, as has been frequently held, to prevent the States from classifying the different subjects of legislation and making different regulations as to the property of different individuals differently situated. The provision of the Federal Constitution is satisfied if all persons similarly situated are treated alike in privileges conferred or liabilities imposed."
>
> Field *v.* Barber Asphalt Co., 194 U. S., 621–2.
> Citing Kentucky R. R. Tax Cases, 115 U. T., 321.
> Hayes *v.* Missouri, 120 U. S., 68.
> Magown *v.* Ill., &c., Bank, 170 U. S., 283.
> Gulf, &c., Railroad Co. *v.* Ellis, 165 U. S., 150.

Under these decisions it seems idle to argue that the classification in the statute assailed is such as to be open to the objection of such want of uniformity as to "deny to appellees the equal protection of the law."

III.

The Right of Contract.

> "The right of contract may be subjected to restraints demanded by the safety and welfare of the State."
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> St. Louis, &c., Ry. *v.* Paul, 173 U. S., 404.
> Knoxville Iron Co. *v.* Harbinson, 183 U. S., 13–22.

The right to contract for a harmful combination is not to be upheld.

Northern Securities Co. *v.* U. S., 193 U. S., 197.

So as to contracts to suppress competition.

Waters-Pierce Oil Co. *v.* Texas, 177 U. S., 42.
National Cotton Oil Co. *v.* Texas, 197 U. S., 115.

The rule is recognized in Lochner *v.* New York, 198 U. S., 45; but it is held by the majority opinion not to apply to restrictions upon the occupation and employment of bakers as a class.

As to other occupations, eight-hour laws have been sustained, although they necessarily limited the right of contract.

Holden *v.* Hardy, 169 U. S., 366.
Atkins *v.* Kansas, 191 U. S., 223.
And see Mugler *v.* Kansas, 123 U. S., 661.

And so of laws prohibiting the manufacture and sale of colored oleomargarine, a healthful food product, which remained wholesome after the coloring. It was enough that it was an imitation of genuine butter. The rights of occupation, employment and contract were clearly taken away by this statute.

Capital City Dairy Co. *v.* Ohio, 183 U. S., 238.
McCray *v.* U. S., 195 U. S., 62.

Nor can the right of contract be sustained as to a combination to injure the business of another.

Aikens *v.* Wisconsin, 195 U. S., 194.

The final word as to the case at bar seems to have been

said in the persuasive case where the Kansas act against combinations to prevent competition, etc., was sustained by this Court, where local grain buyers in a small town entered into a joint combination regulating the purchase of grain by them.

The Court referred to—

U. S. *v.* Reexe, 92 U. S., 214;
Trade-mark Cases, 100 U. S., 82;
U. S. *v.* Harris, 106 U. S., 629;
Baldwin *v.* Franks, 120 U. S., 678.

And it was said, opinion by Mr. Justice Brewer:

"Undoubtedly there is a certain freedom of contract which can not be destroyed by legislative enactment. In pursuance of that freedom parties may seek to further their business interests, and it may not always be easy to draw the line between those contracts which are beyond the reach of the police power and those which are subject to prohibition or restraint. But a secret arrangement by which under penalties an apparently existing competition among all the dealers in a community in one of the necessaries of life is substantially destroyed, without any merging of interests through partnership or incorporation, is one to which the police power extends."

And it was added:

"As said by the Supreme Court of the State concerning the defendant's criticism of the breadth of this statute (p. 247):

"'He can not be heard to object to the statute merely because it operates oppressively upon others.

> The hurt must be to himself. The case, under appellant's contention as to this point, is not a case of favoritism in the law. It is not a case of exclusion of classes who ought to have been included, the leaving out of which constitutes a denial of the equal protection of the law, but it is the opposite of that. It is a case of the inclusion of those who ought to have been excluded. Hence, unless appellant can show that he himself has been wrongfully included in the terms of the law, he can have no just ground of complaint. This is fundamental and decisively settled. City of Kansas City *v.* Railway Co., 59 Kansas, 427, affirmed under the title Clark *v.* Kansas City, 176 U. S., 114; Supervisors *v.* Stanley, 105 U. S., 305, 311; Pittsburg, &c., R. Co. *v.* Montgomery, 152 Indiana, 1.'"
>
> Smiley *v.* Kansas, 196 U. S., 456–7.

The Supreme court of Iowa takes the same view of a combination of local dealers to suppress competition in butter. Such combination and the contract by which it was established was held void as against sound public policy.

Chapin *v.* Brown, 83 Iowa, 156.

The statute complained of is in accordance with the general public policy and statutes of Iowa. Thus, in 1890, six years prior to that statute, the legislature prohibited combinations against competition by enacting a statute, now found in the Code of 1897, as follows:

> Sec. 5060. Pools and trusts.—Any corporation or ganized under the laws of this or any other State or county transacting or conducting any kind of busi-

ness in this State, or any partnership, association of individual, creating, entering into or becoming a member of or a party to any pool, trust, agreement, contract, combination, confederation or understanding with any other corporation partnership, association or individual, to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this State, shall be guilty of a conspiracy. (23 G. A., ch. 28, sec. 1.)

Sec. 5061. Corporation not to enter.—No corporation shall issue or own trust certificates, and no corporation, nor any agent, officer, employee, director or stockholder of any corporation, shall enter into any combination, contract or agreement with any person or corporation, or with any stockholder or director thereof, for the purpose of placing the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with intent to limit or fix the price or lessen the production or sale or any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article. (Same, sec. 2.)

Sec. 5062. Penalty.—Any corporation, company, firm or association violating any of the provisions of the two preceding sections shall be fined not less than one per cent. of its capital or amount invested in such corporation, company, firm or association, nor more than twenty per cent. of the same; and any president, manager, director, officer, agent or receiver of any corporation, company, firm or association, or any member of any corporation, com-

pany, firm or association, or any individual, found guilty of a violation thereof, shall be fined not less than five hundred nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or both. (Same, sec. 3.)

Sec. 5063. Contracts void.—All contracts or agreements in violation of any provisions of the three preceding sections shall be void. (Same, sec. 4.)

Sec. 5064. Defense.—Any purchaser of any article or commodity from any individual, company, or corporation transacting business contrary to any provisions of the four preceding sections shall not be liable for the price or payment thereof, and may plead such provisions as a defense to any action for such price or payment. (Same, sec. 5.)

Sec. 5065. Forfeiture of charter.—Any corporation created or organized by or under the law of this State which shall violate any provision of the five preceding sections, shall thereby forfeit its corporate right and franchise, as provided in the next section. (Same, sec. 6.)

Sec. 5066. Notice by Secretary of State.—The Secretary of State, upon satisfactory evidence that any company or association of persons incorporated under the laws of this State have entered into any trust, combination or association in violation of the provisions of the six preceding sections, shall give notice to such corporation that, unless it withdraws from and severs all business connection with said trust, combination or association, its articles of incorporation will be revoked at the expiration of thirty days from date of such notice. (Same, sec. 7.)

Sec. 5067. Proceedings; inquiry by grand jury.—

County attorneys, in their counties, and the Attorney-General shall enforce the provisions of a public nature in the seven preceding sections, and any county attorney or the Attorney-General securing a conviction under the provisions thereof shall be entitled, in addition to such fee or salary as by law he is allowed for such prosecution, to one-fifth of the fine recovered. When the Attorney-General and county attorney act in conjunction in the prosecution of any action under such provisions, they shall be entitled to one-fourth of the fine recovered, which they shall divide equally between them, where there is no agreement to the contrary. It shall be the duty of the grand jury to inquire into and ascertain if there exists any pool, trust or combination within their respective counties. (Same, sec. 8.)

And, as pointed out in the argument for appellees, the Supreme Court of Iowa has decided that fire insurance is a "commodity" under this statute, and, therefore, fire insurance companies are subject to its terms and provisions.

Beechley v. Mulville, 102 Iowa, 602.

Under the foregoing sections the charter of an Iowa fire insurance company would be forfeited by entering into a prohibited combination, while the license of a foreign company, offending in like manner, would remain unaffected. Nor could foreign insurance companies entering into a combination outside of Iowa and charging in Iowa the rates previously fixed by such combination, be punished criminally either under that, or the statute specially assailed in the case at bar. It was un-

doubtedly this condition which led the legislature to provide for the revocation of their licenses, and it seems obvious that this was a fair and reasonable regulation for protecting the people of Iowa, where no other remedy was in force or could very well be put in force.

IV.

Regulation of Foreign Corporations.

This brings us to the right of the State to regulate foreign corporations doing business within its limits. The law, it is submitted, should be enforced as such reasonable regulation, regardless of all that has been urged against it. The decisions of this Court are not uncertain upon this question.

A state may impose any restrictions it may see fit upon foreign corporations.

Fritts v. Palmer, 132 U. S., 288.
Allgeyer v. Louisiana, 165 U. S., 583.
Dayton Coal Co. v. Barton, 183 U. S., 24.
Farmer's Ins. Co. v. Dabney, 194 U. S., 304.

And may exclude them altogether unless restrained by some other provision of the Federal Constitution than the Fourteenth Amendment.

Silver Horn &c. Co. v. New York, 143 U. S., 314.
Ducat v. Chicago, 10 Wall, 415.

The rule sustained in a case involving right of contract affecting competition under a Texas statute.

Waters-Pierce Oil Co. v. Texas, 177 U. S., 42.

And see, construing statutes of Missouri and California, regulating insurance.

Orient Ins. Co. *v.* Daggs, 172 U. S., 557.

Hooper *v.* California, 155 U. S., 648.

A very late case as to revoking such licenses for entering into combinations to suppress competition, quite in point and quite conclusive, is—

National Oil Company *v.* Tex., 197 U. S., 115.

It is to be remembered that all statutes punishing criminally are special in character, and are not within the "uniformity" clauses of constitutions.

Martin *v.* Blattner, 86 Iowa, 286.

The case must, therefore, be a very clear one in order to warrant denying to a State the exercise of the police power within its own jurisdiction. It would seem to be an inevitable conclusion that a law to protect its people from combinations and conspiracies to suppress competition in, and put up the prices of, fire insurance, a prime necessity in business life, should be unhesitatingly sustained.

It is not enough to sustain the injunction against the entire law that cases may arise as to which the law would be held bad. *If, on the contrary, any case may arise where the law should be sustained,* then the action of the court below was error, and should be reversed.

V.

The Statutes Quoted.

Sections 1637 to 1639 of Code of Iowa, quoted in ap-

pellees' argument, pp. 14 and 15, have no bearing upon this case. The bill does not allege that a single one of appellees was not transacting business in Iowa prior to 1886, and does not show that any one of them have paid the fees or taken out the permit required by those sections. These sections are from Ch. 1, Title IX, of the Code.

The sections assailed are from Ch. 4 of Title IX. Going to that chapter, which relates to fire insurance companies, its provisions, so far as material to this case, are:

By section 1700, domestic fire insurance companies must have a permit, which must be renewed annually.

"Section 1715. Certificate refused. The auditor of State shall withhold his certificate or permission of authority to do business from any company neglecting or failing to comply with the provisions of this chapter." This covers both domestic and foreign corporations.

Sec. 1724 is printed in appellees argument, pp. 16 and 17, and requires an annual certificate from the auditor for foreign corporations.

By section 1725 every agent of every company must have a certificate of authority from the State Auditor.

By section 1735 the certificate of a foreign company is required to be revoked by the State Auditor, and notice given when it is found to be in an unsound condition.

By section 1737 all companies are required to publish annually in two newspapers of Iowa the certificate of the State Auditor that they have in all respects complied with the law of the State relating to insurance.

By section 1747 every insurance company doing busi-

ness in the State is required, when necessary, to change its charter and by-laws to conform to the provisions of the chapter and other laws of Iowa.

Sec. 1752 regulates the fees to be paid by both domestic and foreign companies on beginning business and annually thereafter.

This section is important because it covers the only fees which the bill shows appellees to have paid.

Taking these sections as a whole, in connection with the sections assailed, the regulations imposed upon fire insurance companies are eminently reasonable and just, and ought to be sustained as fair protection to the people of the State.

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